

# Invicti Subscription Services Agreement

IMPORTANT – CAREFULLY READ ALL THE TERMS AND CONDITIONS OF THIS INVICTI SUBSCRIPTION AND SERVICES AGREEMENT (THIS “AGREEMENT”). BY SIGNING AN ORDER FORM INCORPORATING THIS AGREEMENT, CLICKING “I ACCEPT”, CLICKING “CREATE”, PROCEEDING WITH THE INSTALLATION AND/OR ACCESS AND USE OF THE INVICTI SOLUTION, OR USING THE INVICTI SOLUTION AS AN AUTHORIZED REPRESENTATIVE OF YOUR COMPANY NAMED ON THE APPLICABLE ORDER FORM ON WHOSE BEHALF YOU INSTALL AND/OR USE THE INVICTI SOLUTION, YOU ARE INDICATING THAT YOU HAVE READ, UNDERSTAND, AND ACCEPT THIS AGREEMENT WITH INVICTI (AS DEFINED BELOW). IF YOU DO NOT AGREE WITH ALL OF THE TERMS OF THIS AGREEMENT, DO NOT INSTALL, COPY, OR OTHERWISE USE THE INVICTI SOLUTION. THE EFFECTIVE DATE OF THIS AGREEMENT SHALL BE THE DATE THAT YOU SIGN AN ORDER FORM WITH INVICTI OR OTHERWISE ACCEPT THIS AGREEMENT AS SET FORTH ABOVE.

## 1. Definitions.

1.1 “**Affiliates**” means, with respect to a party at a given time, an entity that then is directly or indirectly controlled by, is under common control with, or controls that party, and here “control” means an ownership, voting, or similar interest representing fifty percent (50%) or more of the total interests then outstanding of that entity.

1.2 “**Customer Data**” means data, files, or information, including data, files, or information that include Personal Data, accessed, used, communicated, stored, or submitted by Customer or Customer’s Users use of the Invicti Solution.

1.3 “**Documentation**” means the operating instructions, user manuals, product specifications, “read-me” files, and other documentation that Invicti makes available to Customer in hard copy or electronic form for the Invicti Solution, including any modified, updated, or enhanced versions of such documentation.

1.4 “**Intellectual Property Rights**” means all intellectual property rights, including copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, and all other proprietary rights, whether registered or unregistered.

1.5 “**Invicti**” means the Invicti entity identified on an Order Form, or if none is identified: (i) if Customer’s primary billing address is located in the United States, Latin America, or Canada (“North America”), Invicti Security Corp., a

Florida corporation with principal place of business at 220 Industrial Blvd., Suite 102, Austin, TX 78741; or (ii) if Customer's primary billing address is located outside of North America, Invicti Security Ltd., a limited liability company registered in Malta with principal place of business at Mirabilis Building, Triq L – Intornjatur, Mriehel, CBD 3050, Malta.

1.6 “**Invicti Solution**” means Invicti's proprietary Acunetix or Netsparker web application security scanning software programs made available to Customer as the Software or Services and related Support services (each as defined below) as specified on an Order Form

1.7 “**Open Source Software**” means computer software for which the source code is freely available according to the specific license under which that software is distributed.

1.8 “**Order Form**” means an order form or other ordering document entered into between Customer and Invicti or an Invicti Affiliate for Customer's purchase of the Invicti Solution (as defined below) or other services from Invicti.

1.9 “**Personal Data**” means information that may be used to readily identify an individual person.

1.10 “**Services**” means the Invicti proprietary Acunetix or Netsparker software as a service scanner program provided for use over the internet and any and all modified, updated, or enhanced versions thereof that Invicti may provide to Customer or its Users.

1.11 “**Software**” means the Invicti proprietary Acunetix or Netsparker software programs provided in executable code form and any and all modified, updated, or enhanced versions thereof that Invicti may provide to Customer or its Users.

1.12 “**Subscription**” means a subscription purchased by Customer to access and use the Invicti Solution and to receive Support during the applicable Subscription Term.

1.13 “**Subscription Term**” means the contract term for Customer's access and use of the Invicti Solution as set forth on the applicable Order Form.

1.14 “**Support**” means the standard maintenance or support provided by Invicti or its designated agents for the Invicti Solution as set forth in this Agreement.

1.15 “**Usage Parameters**” means the maximum number of permitted web application scan targets using the Invicti Solution as specified on an Order Form and any other parameters specified in the Documentation, Order Form, or other

writing by Invicti regarding the scope of use of the Invicti Solution by Customer or its Users.

1.16 “**User(s)**” means Customer’s employees, contractors, or agents who are authorized to use the Invicti Solution subject to applicable Usage Parameters and the terms of this Agreement and only for Customer’s internal business purposes.

## **2. Invicti Solution.**

2.1 *License Grant.* Subject to Customer’s compliance with the terms and conditions of this Agreement, including payment of all applicable fees, Invicti hereby grants to Customer a limited, non-sublicensable, non-exclusive, non-transferable, worldwide license, solely during the Subscription Term or Trial Period (defined below), as applicable and as set forth in the Order Form, to:

(i) if Customer has purchased the Services, access, and use, and permit its Users to access and use, the Services over the internet solely for Customer’s internal business purposes, subject to the Usage Parameters set forth on the Order Form, and in accordance with the Documentation;

(ii) if Customer has purchased the Software, install, execute, and use, or permit Users to install, execute, and use, in object code form only, the Software on Customer-provided hardware solely for Customer’s internal business purposes, subject to the Usage Parameters set forth on the Order Form, and in accordance with the Documentation; and

(iii) for any purchase of the Invicti Solution, reproduce and use a reasonable number of copies of the Documentation in support of the exercise of the licenses granted in clauses (i) and (ii) above.

2.2 *Restrictions.* Except as expressly set forth in this Agreement, and to the maximum extent permitted by applicable law, Customer will not (and will not allow any third party to): (i) decompile, disassemble, reverse engineer, or otherwise attempt to derive the structure of the Invicti Solution or the source code from the Invicti Solution; (ii) distribute, license, sublicense, assign, transfer, provide, lease, lend, rent, disclose, use for timesharing or service bureau purposes, or otherwise use or allow others to use for the benefit of any third party, the Invicti Solution (except as expressly and specifically authorized in writing by Invicti); (iii) use or access the Invicti Solution in order to build a similar or competitive product or service or to disclose to any third party any benchmarking or comparative study involving the Invicti Solution; (iv) modify, adapt, translate, or create derivative works of the Invicti Solution or

Documentation; (v) remove, alter, or obscure in any way any proprietary rights notices (including copyright notices) of Invicti or its suppliers on or within the Invicti Solution or Documentation; (vi) use the Invicti Solution for or in conjunction with, or initiate security scanning of, any web domain (or part of a domain) that has any content that may be illegal in nature; (vii) use the Invicti Solution to scan any third party website or web application without such third party's prior written consent; or (viii) violate any applicable laws or regulations or any rights of any third party in connection with the use or access of the Invicti Solution. Invicti reserves all rights and licenses not expressly granted to Customer in Section 2.1, and no implied license is granted by Invicti. CUSTOMER ACKNOWLEDGES THAT THE INVICTI SOLUTION MAY INCLUDE FEATURES TO PREVENT USE AFTER THE APPLICABLE SUBSCRIPTION TERM AND/OR IN THE EVENT OF CUSTOMER'S USE INCONSISTENT WITH THIS AGREEMENT.

*2.3 Delivery and Acceptance.* Following the execution of this Agreement, Invicti will make the Invicti Solution available to Customer either via the internet or for download, as applicable. The Invicti Solution, including any updates or upgrades that Invicti may make available to Customer from time-to-time, will be considered delivered and deemed accepted by Customer upon Invicti making the Invicti Solution (or the relevant update or upgrade) available to Customer.

*2.4 Proprietary Rights.* Invicti and its licensors retain all right, title, and interest in and to the Invicti Solution and related Documentation and materials (and any and all copies thereof) including any and all Intellectual Property Rights held by Invicti in the Invicti Solution. Title to the Invicti Solution will not pass from Invicti to Customer, and the Invicti Solution and all copies thereof will at all times remain the sole and exclusive property of Invicti.

*2.5 Open Source Software.* The Invicti Solution may incorporate and consist of third-party Open Source Software which Customer may use under the terms and conditions of the specific license under which the Open Source Software is distributed. Title to Open Source Software remains with the applicable licensor(s). Any Open Source Software provided with or contained in the Product is provided "AS IS" and without any warranty of any kind.

*2.6 Feedback.* To the extent Customer or any User provides suggestions or feedback to Invicti regarding the functioning, features, and other characteristics of the Invicti Solution, Documentation, or other materials or services provided or made available by Invicti ("**Feedback**"), Customer hereby grants Invicti a perpetual, irrevocable, non-exclusive, royalty-free, fully-paid, fully-transferable, worldwide license (with rights to sublicense through multiple tiers of

sublicensees) for Invicti to use and exploit such Feedback in any manner for the purpose of improving and continuing the development of the Invicti Solution.

*2.7 Trial Versions and Beta Features.* Invicti will have no liability under the Agreement (including any indemnification obligations) arising out of or related to any use of a Trial Version or Beta Feature by Customer. Any use of a Trial Version or Beta Feature will be solely at Customer's own risk and may be subject to additional requirements as specified by Invicti. Invicti is not obligated to provide Support for any Trial Version or Beta Feature, and all Trial Versions or Beta Features are provided as-is without warranty of any kind. **"Trial Version(s)"** means any Invicti Solution version that is provided by Invicti on a "Trial", "Evaluation", or "Proof of Concept" basis whether or not identified as such by Invicti on an Order Form. Invicti will provide the Trial Version free of charge for a time period of fifteen (15) business days, and Customer acknowledges and agrees that if Customer has not purchased a Subscription prior to the expiration of such fifteen (15) day period then this Agreement will automatically terminate (without the requirement of providing any termination notice) and the Trial Version may cease functioning. **"Beta Feature(s)"** means any Invicti Solution feature that is identified by Invicti, including via the applicable Invicti Solution user interface or via other communications to Customer, as "Beta", "Alpha", "Experimental", "Limited Release" or "Pre-Release" or that is otherwise identified by Invicti as unsupported. Invicti may, in its sole discretion, (i) cease providing Beta Features at any time, or (ii) cease providing Beta Features free of charge and require Customer to purchase such features for continued use as part of the Invicti Solution. Customer will not attempt to circumvent, dismantle, or otherwise interfere with any time-control disabling functionality in any Trial Version or Beta Feature that causes the Trial Version or Beta Feature to cease functioning.

### **3. Support.**

*3.1 Invicti Support.* During the applicable Subscription Term set forth in an Order Form, and subject to Customer's payment of applicable fees and prompt installation of applicable updates, Invicti will provide Customer with Support. Customer agrees to: (i) promptly contact Invicti with all problems with the Invicti Solution; (ii) provide Invicti with all relevant information regarding such problems; and (iii) and implement any corrective procedures that Invicti requires to provide Support.

*3.2 Provision of Support.* During the Term, Customer may receive:

*3.2.1 Online Support.* Customer's contact(s) may submit support and related requests via an online portal that is available on the Support website 24 hours



a day, 7 days a week, 365 days a year. Each request is given a unique identification number for Customer's convenience and reference. All online Support submissions are managed using the English language.

**3.2.2 E-mail Support.** E-mail Support is available in response to Support requests made via the online portal and is generally available 24 hours a day, 5 days a week.

**3.2.3 Other Support.** In addition to its general Support offerings described above, Invicti will: (a) provide Customer with technical Support via telephone on an as-needed basis; (b) provide online access to technical Support bulletins and other user Support information and forums to the full extent it makes such resources available to its other customers; and (c) use commercially reasonable efforts to provide Customer with any other services as may be useful in troubleshooting and error correction.

**3.3 *Limitations.*** Invicti will have no obligation to provide Support for problems caused by or arising out of the following: (i) modifications or changes to the Software or Services not authorized or recommended by Invicti; (ii) use of the Software or Services not in accordance with the Agreement or Documentation; or (iii) third-party products that are not authorized in the Documentation or, for authorized third-party products in the Documentation, problems arising solely from such third-party products.

**3.4 *End of Life / End of Support.*** Invicti shall not be obligated to provide Support for any version of the Invicti Solution aside from the current and previous version. Notwithstanding anything to the contrary herein, Invicti may, at its discretion, decide to retire past versions of the Invicti Solution from time to time ("**End of Life**"). Invicti shall publicly post a notice of End of Life, including the last date of general commercial availability of the affected version of the Invicti Solution and the timeline for discontinuing the Support on its website. Invicti shall have no obligation to provide Support for the version of the Invicti Solution that is outside of the applicable service life.

## **4. Security and Data Privacy.**

Customer agrees that Invicti may process performance, usage, consumption, and Personal Data about Customer and Customer's Users' use of the Invicti Solution in accordance with its Privacy Policy. Each party will comply with its respective obligations under applicable data protection legislation and will maintain appropriate administrative, physical, technical, and organizational measures that provide an appropriate level of security for Confidential Information (defined below) and Customer Data. If Invicti processes Personal

Data on Customer's behalf to provide the Invicti Solution, Customer expressly agrees that it is the data controller (and Invicti, the data processor) and that Customer will determine the purpose and manner in which such Personal Data is or will be processed.

## **5. Fees and Payment.**

**5.1 Subscription Fees.** Fees will be due and payable as set forth on the Order Form, and Customer agrees to timely pay all fees. Payment obligations are non-cancelable, and fees paid are non-refundable. All payments shall be made in the currency stated on the Order Form. Invicti reserves the right to increase its fees on an annual basis, provided that any such increase would not take effect until the end of the then-current Subscription Term. At any time during a Subscription Term, Customer may submit an Order Form to increase the Usage Parameters, and, upon Invicti's acceptance of such Order Form, Customer will pay the fees due for such increase at a pro-rated amount for the remainder of Customer's then-current Subscription Term. Any Order Form for such an increase will renew concurrently with Customer's then-current Subscription Term for a period equal to Customer's initial Subscription Term.

**5.2 Support Fees.** Support fees are included in the Subscription fees.

**5.3 Taxes.** Customer must pay to the relevant taxing authorities or reimburse Invicti, as applicable, all Taxes arising out of the transactions contemplated by the Agreement. Here "**Taxes**" means any sales, VAT (value-added tax), GST (goods and services tax), use, gross receipts, business and occupation, and other taxes (other than taxes on our income), export and import fees, customs duties, and similar charges imposed by any government or other authority. If Customer is required to pay or withhold any Taxes for payments due under the Agreement, Customer must gross up its payments so that Invicti receive all sums due in full and free of any deductions. If Customer is required to pay any Taxes to a taxing authority, Customer agrees to provide documentation to Invicti upon Invicti's request showing that Customer paid those Taxes.

**5.4 Inspection Right.** During the Subscription Term and for one (1) year after its expiration or termination, Customer will maintain accurate records of its use of the Invicti Solution sufficient to show compliance with the terms of this Agreement. During this period, Invicti will have the right to inspect Customer's use of the Invicti Solution to confirm compliance with the terms of this Agreement. Any such inspection is subject to reasonable notice by Invicti and will not unreasonably interfere with Customer's business activities. Invicti may conduct no more than one (1) inspection in any twelve (12) month period and may only conduct such inspection during normal business hours. Customer will

reasonably cooperate with Invicti and any third-party auditor and will, without prejudice to other rights of Invicti, address any non-compliance identified by the inspection by promptly paying additional fees showed to be due and owing.

## **6. Term and Termination.**

6.1 *Term.* Subject to the termination rights as set forth in this Agreement, the term of this Agreement will commence on the Effective Date and will continue for as long as the Invicti Solution is being provided to Customer under this Agreement. The Subscription Term will automatically renew for successive terms equal in duration to the initial Subscription Term unless either party notifies the other party in writing, not less than thirty (30) calendar days before the expiration of the then-current Subscription Term, that such party does not wish to renew the Invicti Solution for an additional Subscription Term.

6.2 *Termination.* Either party may terminate this Agreement immediately without further notice if the other party breaches its obligations under this Agreement and does not remedy such breach within thirty (30) calendar days of the date on which the breaching party receives written notice of such breach from the non-breaching party. Additionally, either party may terminate this Agreement and any or all Orders without liability to the other party if the other enters into compulsory or voluntary liquidation, ceases for any reason to carry on business, or takes or suffers any similar action that the other party reasonably believes will materially impair its performance under the Agreement (including payment of fees).

6.3 *Effect of Termination.* Upon the termination of this Agreement: (i) the licenses granted under this Agreement for the Invicti Solution will immediately terminate, and Customer and its Users will cease use of the Invicti Solution; (ii) Invicti's obligations to provide Support will immediately terminate; (iii) in the event of a termination for Customer's breach of the Agreement, Customer will pay to Invicti the full amount of any outstanding fees due hereunder; (iv) in the event of a termination for Invicti's breach of the Agreement, Invicti will refund to customer the pro-rata amount of any prepaid but unused fees; and (v) on Customer's request, Invicti will destroy or return all Customer Confidential Information in its possession or control and will not make or retain any copies of such information in any form, except that the receiving party may retain one (1) archival copy of such information solely for the purposes of ensuring compliance with this Agreement. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE INVICTI SOLUTION MAY CONTAIN DISABLING CODE THAT (EITHER AUTOMATICALLY OR AT INVICTI'S CONTROL) WILL RENDER THE INVICTI SOLUTION (AND RELATED DATA) UNUSABLE



UPON TERMINATION OR CUSTOMER'S BREACH OF THIS AGREEMENT AND FAILURE TO CURE WITHIN FIVE (5) DAYS NOTICE OF SUCH BREACH BY INVICTI. The following Sections will survive any termination or expiration of this Agreement: 1, 2, 4, 5, 6.3, and 7 through 13 (inclusive).

## **7. Limited Warranty.**

Invicti represents and warrants to Customer that the Invicti Solution, when used for its intended purpose and in accordance with Invicti's instructions, will perform substantially in conformance with the Documentation for a period of thirty (30) calendar days from the date Customer is first permitted to access and use the Invicti Solution. Customer's sole and exclusive remedy, and Invicti's sole and exclusive liability, for any breach of this warranty, will be, at Invicti's sole discretion, to either remedy the defect or refund the applicable fees paid by Customer for the Invicti Solution provided that Customer promptly notifies Invicti in writing of any alleged breach of this warranty within such thirty (30) calendar day period. This warranty is null and void to the extent the Invicti Solution: (i) fails to conform with this warranty as a result of its use with any third-party hardware or software other than as authorized by Invicti; or (ii) is used for an unintended purpose, is used other than in accordance with its published Documentation or specifications, or is otherwise used in breach of this Agreement. OTHER THAN THE WARRANTY ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INVICTI, ITS SUPPLIERS, OR ITS LICENSORS MAKE NO OTHER EXPRESS WARRANTIES UNDER THIS AGREEMENT AND DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. INVICTI AND ITS SUPPLIERS AND LICENSORS DO NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED, BE FREE FROM DEFECTS, OR MEET CUSTOMER'S REQUIREMENTS.

## **8. Indemnification.**

**8.1 *Indemnification by Invicti.*** Invicti will indemnify, defend, and hold Customer harmless against any third party claim that the Software or Services infringe or misappropriate any Intellectual Property Rights of a third party held under the laws of the United States or the European Economic Area provided that Customer promptly notifies Invicti of any and all threats, claims, and proceedings related thereto and gives reasonable assistance and the opportunity for Invicti to assume sole control over defense and

settlement. Invicti will not be responsible for any settlement it does not approve, provided that any such approval will not be unreasonably withheld. The foregoing obligations do not apply with respect to the Invicti Solution or portions or components thereof (a) not created by Invicti; (b) modified by Customer after delivery by Invicti and without Invicti recommendation or authorization; (c) combined with other products, processes, or materials where the alleged infringement arises directly from such combination; (d) for which Customer continues allegedly infringing activity after being notified thereof by Invicti or after being informed of modifications that would have avoided the alleged infringement; (e) where Customer's use of such Invicti Solution is not strictly in accordance with the Agreement and any Documentation; or (f) a Trial Version. In the event of a claim, or if Invicti believes a claim is likely, Invicti may modify the Invicti Solution, obtain a license for Customer, or – if none of the foregoing is accomplished – terminate this Agreement and provide Customer with a pro-rata refund of any prepaid but unused fees. This Section states Invicti's entire liability (and shall be Customer's sole and exclusive remedy) with respect to indemnification to Customer.

**8.2 Indemnification by Customer.** Customer will indemnify, defend, and hold Invicti harmless from all damages, costs, settlements, attorneys' fees, and expenses related to any claim arising from (i) Customer Data, or (ii) Customer's use or distribution of the Invicti Solution, including any Trial Version or Beta Feature, in violation of this Agreement.

## **9. Limitation of Liability.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL INVICTI OR ITS LICENSORS BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. INVICTI'S AND ITS LICENSORS' LIABILITY UNDER THIS AGREEMENT WILL NOT, IN ANY EVENT, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EXCEED THE GREATER OF THE LICENSE FEES CUSTOMER PAID IN THE PAST TWELVE (12) MONTHS FOR THE INVICTI SOLUTION GIVING RISE TO THE CLAIM OR \$10,000. THE FOREGOING LIMITATIONS WILL APPLY REGARDLESS OF WHETHER INVICTI OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL

PURPOSE. CUSTOMER MAY NOT BRING A CLAIM UNDER THIS AGREEMENT MORE THAN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION ARISES. THESE LIMITATIONS WILL SURVIVE AND APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT OR ANY LIMITED REMEDY HEREUNDER.

## **10. Confidentiality.**

**“Confidential Information”** means any proprietary information disclosed by one party (**“Discloser”**) and received by the other party (**“Recipient”**) during, or prior to entering into, this Agreement that Recipient should know is confidential or proprietary based on the circumstances surrounding the disclosure. Confidential Information includes the Invicti Solution and any non-public technical and business information. Confidential Information does not include information that (i) is or becomes generally known to the public through no fault or breach of this Agreement by Recipient; (ii) is rightfully known by Recipient at the time of disclosure without an obligation of confidentiality; (iii) is independently developed by Recipient without the use of Discloser’s Confidential Information; or (iv) Recipient rightfully obtains from a third party without restriction on use or disclosure. Recipient will maintain the confidentiality of Confidential Information, and Recipient agrees not to use such Confidential Information for any purpose except as necessary to fulfill its obligations and exercise its rights under this Agreement. Recipient will protect the secrecy of and prevent disclosure and unauthorized use of Discloser’s Confidential Information using the same degree of care that it takes to protect its own confidential information and will in no event use less than reasonable care. Recipient may disclose Discloser’s Confidential Information if required by judicial or administrative process, provided that Recipient first provides Discloser with prompt notice of such required disclosure to enable the Discloser to seek a protective order. Upon termination or expiration of this Agreement and Discloser’s request, Recipient will promptly return or destroy (and provide written certification of such destruction) Discloser’s Confidential Information.

## **11. Publicity.**

Customer agrees that Invicti may publicly disclose that it is providing the Invicti Solution to Customer and may use Customer’s name and logo to identify Customer in promotional materials, including press releases, provided that Invicti does not state or imply that Customer endorses the Invicti Solution. Customer may not issue any press release or publicity regarding the Agreement, use the Invicti name or logo or other identifying indicia, or publicly disclose that it is using the Invicti Solution without Invicti’s prior written consent.

## **12. Government Licenses.**

For purposes of sales to government entities in the United States, the Invicti Solution and the accompanying Documentation are deemed to be “commercial computer software” and “commercial computer software documentation”, respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying, or disclosure of the Invicti Solution or the accompanying Documentation by or for the U.S. Government will be governed solely by the terms and conditions of the Agreement, in conjunction with statutes, regulations, and the terms of the GSA Schedule.

## **13. Export Compliance and Anti-Corruption.**

The Service, Software, and other technology Invicti makes available, and derivatives thereof, may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government or other applicable jurisdiction denied-party list. Customer shall not permit Users to access or use any Service or Software in a U.S. or other applicable jurisdiction embargoed country or in violation of any U.S. or other applicable export law or regulation. Customer has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Invicti’s employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, Customer will use reasonable efforts to promptly notify Invicti’s legal department at [legal@invicti.com](mailto:legal@invicti.com). Customer’s failure to comply with any term of this section will constitute a material breach of this Agreement and entitle Invicti to immediately terminate this Agreement without notice in addition to any other remedy available at law or equity.

## **14. Future Functionality.**

Customer agrees that it has not relied on the availability of any future functionality of the Invicti Solution or any other future product or service in executing this Agreement or any Order Form. Customer acknowledges that information provided by Invicti regarding future functionality should not be relied upon to make a purchase decision.

## **15. Miscellaneous.**

**15.1 Entire Agreements and Modifications.** This Agreement and the Order Form constitute the entire agreement between the parties and supersede any

prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. No modification of any term of this Agreement is effective unless set forth in writing and signed by both parties.

**15.2 Order of Precedence.** If there is an inconsistency between this Agreement and an Order Form, the Order Form prevails.

**15.3 Irreparable Harm.** Any breach by a party of this Agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach of this Agreement.

**15.4 Assignment.** This Agreement may not be assigned by either party without the prior written approval of the other party, (such approval not to be unreasonably withheld) except in connection with (i) a merger, consolidation, or similar transaction involving (directly or indirectly) a party, (ii) a sale or other disposition of all or substantially all of the assets of a party, or (iii) any other form of combination or reorganization involving (directly or indirectly) such party. Any purported assignment in violation of this section shall be null and void and have no effect.

**15.5 Force Majeure.** A party is not liable under this Agreement for non-performance caused by events or conditions beyond that party's control if that party makes reasonable efforts to perform ("**Force Majeure Event**").

**15.6 Notices.** Except for operational notices which may be sent by email, any notice, report, approval, authorization, agreement, or consent required or permitted hereunder will be in writing as follows: notices will be sent to the address that the applicable party has or may provide by written notice or, if there is no such address, the most recent address the party giving notice can locate using reasonable efforts. A copy of any notices sent to Invicti should also be sent to [legal@invicti.com](mailto:legal@invicti.com).

**15.7 Waiver and Enforceability.** No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. If any provision will be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this arrangement will otherwise remain in full force and effect and enforceable.

**15.8 Governing Law.** This Agreement will be deemed to have been made in, and will be construed pursuant to: (i) if Customer is located in North America,



the laws of the state of Texas without regard to conflicts of laws provisions thereof and without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act; (ii) if Customer is located outside of North America, the laws of Malta without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act. Customers located in North America hereby consent to the jurisdiction of the courts of both the state and/or federal courts of Texas, and Customers located outside of North America hereby consent to the jurisdiction of the courts of Malta. The substantially prevailing party in any action to enforce this agreement will be entitled to recover its attorney's fees and costs in connection with such action.

**15.9 Non-Solicitation.** Customer and Invicti each agree that while an employee or any personnel is affiliated with Customer or Invicti, and while that employee or personnel is associated with the provision or development of the Invicti Solution under this Agreement and for a period of one (1) year after such person ceases to be so associated, Customer and Invicti shall not directly or indirectly solicit for hire, hire, or retain through a third party, the employee or personnel of the other party as an employee, consultant, or independent contractor except with prior written consent of the other party.

**15.10 No Additional Terms.** Any pre-printed or standard terms of any purchase order, confirmation, or similar form, even if signed or agreed to by the parties after the Effective Date, will have no force or effect.

Last modified February 4, 2022.